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10/578,157	05/29/2007	Xaver Einsle	2693-000024/US/NP	8800
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EXAMINER				
DOE, SHANTA G				
ART UNIT		PAPER NUMBER		
1797				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/578,157

**Applicant(s)**

EINSLE ET AL.

**Examiner**

SHANTA G. DOE

**Art Unit**

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 7, 8, 10, 13 and 15 is/are rejected.
- 7) ☒ Claim(s) 4, 6, 9, 11, 12 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 5/4/2006.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informalities:

Paragraph [0001] contain the phrases "a chamber according to the preamble of claim 1" and "a method according to the preamble of claim15". The above phrases need to be replaced with the actual language contained in the preamble, i.e., the phrase "a chamber according to the preamble of claim 1" needs to be replaced with "a chamber that is defined by an object support" and by the "platform arranged at a distance of said object support."

Paragraphs [0004] and [0006] contain similar informalities as stated above.

Appropriate correction is required.

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

**The abstract contains legal phraseology such as "said".**

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 2, 5, 12 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Regarding claim 2 and 12, the phrase "preferably" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention.

6. Claim 5 recites the limitations "the third area", "the first area" and "the second area". There is insufficient antecedent basis for this limitation in the claim 1; however there is proper antecedent basis in claim 4.

7. Regarding claim 15, the claim fails to particularly point out and distinctly claim the subject matter because it is unclear to the examiner whether the applicant is claiming a method of wetting an object or a method of making a device for wetting objects because the preamble and body of the claim appear to be directed towards a method of making a device used for wetting object.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 3, 7, 8, 10, & 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Armstrong et al (US 6,228,635).

Regarding claim 1, Armstrong discloses a platform ((300), see fig 7 & 8) for a device for wetting objects, especially for an incubation/hybridization chamber that is defined by an object support and by the platform arranged at a distance to said object support; said platform comprising a base (bottom of part of (304)) provided with at least one spacer (the spacer would be the piece between (336) and (304), see fig 7) and a frame (336) carrying said base; wherein the base is movably mounted relative (the base on (304) ) to the frame by means of a bearing device ((324a) & (324b) and (328a) & (328b) (these bearings are used for rotation which causes a tilt in 304)); see fig 8), that said bearing device, in a first functional position, maintains the base in such a manner that it projects from the frame and/or the bearing device, and in a second functional position in project in some areas beyond an imaginary plane (E) in which the surface of the base is disposed (see fig 7 and 8; col. 15 -18 and entire document).

Regarding claim 3, Armstrong discloses the platform according to claim 1, wherein the bearing device is annular (bearing device (328a&328b) are annular) in design (see fig 8).

Regarding claim 7, Armstrong discloses the platform according to claim 1, wherein the base comprises at least one attachment (base of (304) is attached to the device (318) (see fig 8).

Regarding claim 8, Armstrong discloses the platform according to claim 1, wherein at least one supply line (the means of supply media to the cassette (100) when it is connected to device (300)) exists to the space lying between the base and the object support (see fig 7 and 8; col. 15 -18 and entire document & all figs.) .

Regarding claim 10, Armstrong discloses the platform according to claim 1, wherein at least one discharge (the harvest tube) exists from the space lying between the base and the object support ((see fig 7 and 8; col. 17-18 and entire document & all figs.)).

Regarding claim 13, Armstrong discloses the platform according to claim 1, further comprising a holder (cassette (10)).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

13. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong et al (US 6,228,635).

Regarding claim 2, Armstrong discloses the platform according to claim 1. Armstrong fails to specifically disclose that the bearing device consists of an elastic material, preferably silicone.

However, it would have been obvious to one having ordinary skill in the art at the time of the invention to have the bearing device consist of an elastic material preferably silicone, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design.

***Allowable Subject Matter***

14. Claims 4-6, 11, 12, and 14 are objected to as being dependent upon a rejected base claim (claim 1, claim 8 or claim 10), but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Regarding claim 4, the prior art fails to disclose the platform according to claim 1, wherein the bearing device comprises the following areas: a first area which is connected with the frame or, respectively, with its front face, a second area which is connected with the base, and an elastic third area which is arranged between the first area and the second area.



Regarding claim 6, the prior art fails to disclose platform according to claim 1, wherein the bearing device comprises a projection serving as a pipetting attachment.

Regarding claim 9, the prior art fails to disclose the platform according to claim 8, wherein the at least one supply line comprises an opening provided in the surface of the base.

Regarding claim 11, the prior art fails to disclose the platform according to claim 10, wherein the at least one discharge comprises an opening provided in the surface of the base.

Regarding claim 12, the prior art fails to disclose the platform according to claim 1, wherein the at least one supply line and/or the at least one discharge is closable preferably by a membrane.

Regarding claim 14, the prior art fails to disclose the platform according to claim 1, wherein the holder is pivotably connectable with a base part

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHANTA G. DOE whose telephone number is (571)270-3152. The examiner can normally be reached on Mon-Fri 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on 571-272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SD

/Walter D. Griffin/  
Supervisory Patent Examiner, Art Unit 1797